

ROBERT G. ARMSTRONG ET AL.

IBLA 82-215

Decided October 6, 1982

Appeal from decision of the Wyoming State Office, Bureau of Land Management denying petition for reinstatement of oil and gas lease W 69098.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals --  
Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

2. Oil and Gas Leases: Reinstatement

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by inadvertence, reliance on

courtesy billing notices, or reliance upon a purported assignee to make the payment.

APPEARANCES: Houston G. Williams, Esq., Casper, Wyoming, for appellants.

#### OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated November 9, 1981, by the Wyoming State Office, Bureau of Land Management (BLM), denying appellants' 1/ petition for reinstatement of oil and gas lease W 69098.

The lease was issued effective October 1, 1979, for a 10-year period. The rental payment for the lease, due on October 1, was not received until October 9, 1981.

The decision determined that the lease had automatically terminated by operation of law for failure to submit timely the annual rental. It further determined that appellants had not shown reasonable diligence in making timely payment nor that the delay in making payment was justifiable.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). Because appellants' rental payment was not received on October 1, 1981, the due date, the lease terminated automatically. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the lessee shows that failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

[2] Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Appellants' rental payment was due October 1, but it was not transmitted until October 1, 1981. Mailing a rental payment after the due date does not constitute reasonable diligence. Ruth Eloise Brown, 60 IBLA 328 (1981).

[3] For the late submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramoco Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981). Appellants offered the following reasons in support of their petition for reinstatement:

Under date of October 6, 1980 the undersigned [Robert G. Armstrong] assigned this lease to Thomas F. Stroock of Casper, Wyoming who acquired the lease for the account of Farrah

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1/ Appellants in this case are Robert G. Armstrong, Clarkyle, Ltd., and Thomas F. Stroock. The BLM decision named only Armstrong and Clarkyle, Ltd.

Resources. It was my understanding that Stroock of Farrah Resources would pay the rentals. However, according to Farrah's attorney, Mr. Hugh M. Duncan, the assignment to Stroock and Farrah has not been approved and as a result rental notices were not mailed to them. Because of this, Farrah Resources inadvertently did not pay the rental for the captioned lease.

The decision states that the assignment to Farrah Resources (Farrah) was not approved due to the failure of Farrah to qualify to hold Federal oil and gas leases, and that on August 3, 1981, the assignment was returned to Farrah. The statement of reasons offers a more detailed explanation of the circumstances causing the failure to make timely payment. Appellants concede, however, that ultimately, payment was not timely made because of inadvertence arising from the attempted assignment of the lease.

[3] Instances of inadvertence, reliance on courtesy billing notices, or reliance upon a purported assignee for making rental payment, do not justify late payment. Alminex U.S.A., Inc., 64 IBLA 274 (1982); Martin Mattler, 53 IBLA 323, 88 I.D. 420 (1981). The fact that there was an attempted assignment of the lease does not absolve the lessee of record of paying rental timely. 30 U.S.C. § 187(a) (1976) states, "Until such approval [of an assignment], however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." See Bryan Wagner, 41 IBLA 188 (1979).

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Gail M. Frazier  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

